

These are the tentative rulings for civil law and motion matters set for Tuesday, July 1, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, June 30, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0059389 JPMorgan Chase Bank, N.A. vs. Hughey, Clifford D., Jr.

Appearance required. Defendant is advised that his notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Defendant Clifford Huey Jr.'s motion to vacate default judgment and stay writ of possession is denied without prejudice. There is no proof of service in the court's file showing service of the motion on plaintiff.

2. M-CV-0059601 CACH, LLC vs. Ramirez, Arlene

Appearance required. Plaintiff is advised that its notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Plaintiff's Motion for Order That Matters in Request for Admissions be Deemed Admitted is granted. The genuineness of any documents and the truth of all specified matters in plaintiff's requests for admission, set no. 1, are deemed admitted. Plaintiff is awarded sanctions from defendant in the amount of \$337.50. Code Civ. Proc. § 2033.280(c).

3. S-CV-0030195 Bellomy, John H. vs. Hunt, Terrie L.

Plaintiff's Motion to Reopen Discovery is granted in part and denied in part.

Under CCP Sec. 2024.050(b), the court may reopen discovery after the statutory deadline. Among the factors the court is to consider are the necessity and reason for the

discovery, and the diligence or lack thereof of the party seeking the discovery. Sec. 2024.050(b)(1),(2).

The purpose of the proposed discovery is described as “limited,” and the discovery “basic” in the moving points and authorities, at 6:7-8 and 8:6-7. However, the discovery is also characterized as “detailed” at 6:19. The latter characterization appears closer to the mark. The moving papers do not describe the proposed discovery. The only description before the court is that provided in the opposition, which states that 25 form interrogatories, 224 special interrogatories, 18 Requests for Admission, 2 Requests for Production of Documents, and a Demand for Inspection of Premises were propounded. The moving papers do disclose that the plaintiff wishes to depose the defendant.

The court recollects its serial involvement, while plaintiff’s predecessor was still living, in making orders relative to inspection of the property. The moving papers do not address why there is a need for further property inspection in light of the prior inspections, nor why the inspection would be probative of the issues identified in the moving papers. Since the moving party did not disclose the nature of the discovery sought, perforce he did not disclose why the basic information to which form interrogatories are directed is necessary, given that this is the second litigation between the same parties on the same general fact pattern, and decedent’s counsel avers that he *did* conduct discovery in the prior litigation. As to the other discovery, the moving papers do not provide any basis on which to conclude that voluminous “detailed” discovery, as opposed to “basic” discovery is necessary.

Given the long pendency of this matter, the court finds that the excuse why this motion was not brought sooner is lacking in persuasive force.

The court determines that the moving papers are sufficient to establish the need for “basic” discovery. The motion is granted to the extent that the plaintiff may propound 35 specially-prepared interrogatories and may take the deposition of the defendant. The discovery cut off date is September 19, 2014.

The court finds that plaintiff failed to meaningfully meet and confer antecedent to filing the motion. The meeting and conferring was *pro forma* in light of the magnitude of the discovery propounded. Defendant’s request for sanctions is therefore granted in the amount of \$1,250.

4. S-CV-0030429 Lincoln Crossing Comm. Ass'n vs. LB/L Suncal Lincoln

The motion for summary judgment is dropped. No moving papers were filed.

5. S-CV-0030637 Agutos, Florencio, et al vs. Centex Homes

The parties’ requests for judicial notice are granted. However, the court takes judicial notice only of the existence of the documents. The court does not take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments. *Bach v. McNeils* (1989) 207 Cal.App.3d 852, 865.

Cross-defendant St. Paul Mercury Insurance Company's ("St. Paul's") motion for judgment on the pleadings is denied.

A motion for judgment on the pleadings has the same function as a general demurrer. Code Civ. Proc. § 438. A motion for judgment on the pleadings may be made on the ground that the pleading at issue fails to state facts sufficient to constitute a legally cognizable claim or defense. *Colberg, Inc. v. Cal.* (1967) 67 Cal.2d 408, 411-412. Except as provided by statute, the rules governing demurrers apply. *Cloud v. Northrup Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.

St. Paul seeks judgment on the pleadings as to the seventh and eighth causes of action set forth in Centex Homes' ("Centex's") cross-complaint, for declaratory relief. A declaratory relief action requires an actual controversy of legal rights and duties between the parties. Code Civ. Proc. § 1060. Such an action is appropriate only where there is an actual controversy between the parties, not an abstract or academic dispute. *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746-747.

In its seventh cause of action, Centex alleges that St. Paul has failed to provide Centex with a full, complete, immediate and conflict-free defense. (Centex Cross-Complaint, ¶ 109.) Centex alleges that St. Paul eventually agreed to participate in the defense of Centex, subject to a reservation of rights. (*Id.*, ¶ 111, 112.) Centex further alleges that St. Paul asserts a right to recover monies paid to Centex from other subcontractor cross-defendants, resulting in both parties attempting to recoup the same monies from these parties. (*Id.*, ¶ 112(a).) These factual allegations are sufficient for Centex to allege an actual controversy regarding the allocation of defense fees and costs to support the declaratory relief action.

In its eighth cause of action, Centex alleges that it has an immediate, present right to independent counsel because a conflict of interest exists. An insurer may have a duty to provide independent counsel where a conflict of interest arises. Civ. Code § 2860(a). "[W]hen an insurer reserves its rights on a given issue and the outcome of that coverage issue can be controlled by counsel first retained by the insurer for the defense of the claim, a conflict of interest may exist." Civ. Code § 2860(b). Centex alleges that St. Paul agreed to defend Centex under a reservation of rights. (Centex Cross-Complaint, ¶ 111, 112.) Centex alleges that St. Paul's reservation of rights includes a claim that it may simultaneously control the defense of and appoint counsel for Centex and other subcontractor defendants. (*Id.*, ¶ 119(f), (g).) Centex further alleges that this reservation creates an actual conflict of interest because St. Paul can control Centex's defense, which will allow St. Paul to resolve factual findings in its favor. (*Id.*, ¶¶ 120, 121.) These allegations are sufficient to establish a cause of action for declaratory relief regarding a duty to provide independent counsel.

Based on the foregoing, the motion for judgment on the pleadings is denied.

If oral argument is requested, Fireman's Fund's request to appear telephonically is granted. All telephonic appearances are governed by Local Rule 20.8.

6. S-CV-0032271 Figueroa, Tonya, et al vs. Heritage Hotel Group, Inc., et al

The motion to compel is dropped. No moving papers were filed.

7. S-CV-0032577 DelCarlo, Diane vs. Watkins, Gerald

The motion for leave to withdraw as counsel of record is dropped. No moving papers were filed.

8. S-CV-0032617 Gini, Kevin, et al vs. Dixon Daniel R.

As a preliminary matter, the court notes that defendant filed a notice of non-stipulation to the commissioner with respect to his motion for summary judgment. However, as the commissioner has previously heard numerous motions in this matter, defendant is deemed to have stipulated to the commissioner for all matters other than trial per Local Rule 20.2(B). Defendant's notice of non-stipulation is untimely and ineffective.

Rulings on Request for Judicial Notice and Objections to Evidence

Defendant Daniel R. Dixon, individually and dba Dixon Design and Development's ("Dixon's") request for judicial notice is denied as to Exhibits K and L, and otherwise granted.

Plaintiffs' objections to evidence are ruled on as follows: Objection Nos. 1-2 and 5-26 are overruled. Objection Nos. 3 and 4 are sustained.

Dixon's objections to evidence are ruled on as follows: Objection Nos. 1-27, 33 and 35-53 are overruled. Objection Nos. 28-32 and 34 are sustained.

Ruling on Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Dixon's motion for summary judgment, or in the alternative, summary adjudication, is denied.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c). Defendants moving for summary judgment bear the burden of persuasion that one or more elements of the causes of action in question cannot be established, or that there is a complete defense thereto. Code Civ. Proc. § 437c(p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

Dixon argues that plaintiffs may not assert causes of action against him which accrued prior to plaintiffs' purchase of the property. Dixon alternatively argues that the statute of limitations bars plaintiffs' lawsuit because a 2008 inspection report put plaintiffs on notice as to the defects of which they now complaint. Dixon offers no evidence to support the conclusion

that each of the defects that form the basis of plaintiffs' lawsuit was discovered, or should have been discovered, by the original owner. *See Siegel v. Anderson Homes, Inc.* (2004) 118 Cal.App.4th 994, 1009. Plaintiffs also establish a triable issue of material fact regarding whether information contained in the 2008 inspection report was sufficient to put plaintiffs on notice of the latent defects.

Plaintiffs note that while the subject home inspection report noted small cracks, the report contained the opinion that the cracks might be a one-time occurrence related to original construction. The report did not suggest that a structural engineer be contacted, unless plaintiffs had further concerns. (Pltf. SSDMF 40.) Nothing in the report suggested that any minor stucco cracks were caused by a structural defect or deficiency in the property. (Pltf. SSUMF 38.) The test of whether a construction defect is latent or patent is generally a question of fact, "unless the defect is obvious in the context of common experience". *Creekridge Townhome Owners Ass'n, Inc. v. C. Scott Whitten, Inc.* (2009) 177 Cal.App.4th 251, 258. In this case, there is a question of material fact with respect to whether information relating to minor cracks noted in the home inspection report would have placed a reasonable person on inquiry notice of major structural defects in the home. Moreover, Dixon does not establish as a matter of law that each of the defects alleged by plaintiffs caused appreciable damage to the property, so as to put the previous owners on notice. Accordingly, summary judgment may not be granted.

Dixon alternatively seeks an order for summary adjudication, or an in limine ruling to narrow evidence admissible at trial. This argument is not explained in great detail, and Dixon makes no effort to identify exactly what evidence should be rendered inadmissible. In any event, it appears that Dixon seeks an order which would not dispose of an entire cause of action, which is not permissible for purposes of a motion for summary adjudication. Code Civ. Proc. § 437c(f)(1). Accordingly, Dixon's alternative request for summary adjudication or an in limine ruling is denied.

9. S-CV-0033693 Lampe, Shirley vs. Placer County Water Agency, et al

Defendant Mountain Cascade, Inc.'s demurrer to complaint is overruled in part, and sustained in part, with leave to amend.

Defendant's demurrer is overruled with respect to plaintiff's first cause of action for negligence. The complaint, when read as a whole, alleges sufficient facts to support this cause of action.

Defendant's demurrer is sustained with respect to plaintiff's second cause of action for premises liability. Plaintiff concedes that this cause of action is not well-pled. However, plaintiff is given leave to amend per her request to allege a cause of action for trespass.

Plaintiff's amended complaint must be filed and served by July 25, 2014.

10. S-CV-0034007 Watt, James Kin Sing vs. Suede Blue, Inc.

The motion for stay of eviction is continued to July 3, 2014 at 8:30 a.m. in Department 4 to be heard by the Honorable Colleen M. Nichols. The stay of enforcement of the writ of possession against Suede Blue, Inc. is continued to July 3, 2014.

11. S-CV-0034093 Duerner, Gary D., et al vs. Bank of America, N.A., et al

The demurrer to first amended complaint by Bank of America, N.A. is continued to July 3, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

The demurrer to first amended complaint by U.S. Bank, N.A., Wells Fargo Bank, N.A., and Mortgage Electronic Registration Systems, Inc. is continued to July 3, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

12. S-CV-0034687 Kuhlman, Haley - In Re the Petition of

The petition to compromise minor's claim is granted. If oral argument is requested, appearance of the minor is excused.

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